Michigan Judicial Association
Michigan District Judges Association
Remarks of Chief Justice Clifford W. Taylor
August 12, 2006
August 18, 2006

Thank you for making some time for me to speak to you. I appreciate the opportunity.

I'm not going to keep you long, but I do want to address a few areas of interest, including a couple of the Court's recent decisions that I think have particular significance for our bench.

But first, a few words about the Court's administrative process, because I am very concerned that we have had, as the popular expression goes, a "disconnect" between the Supreme Court, and you folks, about the process by which the Court considers and makes administrative changes. I must confess that I was not aware of the depth of this misunderstanding until a recent meeting with representatives of the judicial associations, at which we had a rather spirited discussion concerning the recent changes to MCR 8.110 pertaining to judicial sick leave and vacation. The discussion centered on the letter sent by our Administrative Counsel, Anne Boomer, explaining the changes that the Court was then considering. As an aside, it might interest you to know that, contrary to the perception that was communicated to me at that meeting, the proposal did not originate with the Court or SCAO; it was suggested by chief judges. This is the customary situation.

Overwhelmingly, our administrative proposals are not Justice-driven. In fact, a large number come from the trial bench, and certainly that was the case here. In short, we have been asked to think about this and we are doing so.

Of course, part of my charge, and that of my fellow justices, is that we do occasionally have to take necessary but unpopular steps. But we have really tried to involve the judicial associations, and indeed the public at large, in the administrative process.

Some history may be helpful here. Recall that it wasn't all that long ago that the Court did not have a formal comment process for administrative matters, nor did we hold public hearings. The whole process now detailed in the Court's internal operating procedures, which are on our web site. Part of that process is that the Court notifies the State Bar, its sections and committees, and the presidents of the judicial associations about proposed amendments, as well as the deadline and procedure for comments. This is in addition to publishing proposals for comment, a process which includes sending proposed amendments to media throughout the state. And while the media generally do not find these matters spellbinding, proposed amendments routinely appear in the Michigan Bar Journal and Michigan Lawyers Weekly, as well as in the Michigan Reports. And when the Court issues a proposal for comment, it routinely states that publication does not mean that the Court will adopt all or even part of it. We develop a proposal—again, often in

response to suggestions from you – and put it out for comment, either formally or informally, for you to react to. Occasionally we don't think it's a particularly great idea; you can confirm that or change our thinking.

With regard to the judicial sick leave and vacation provisions, we realized they were controversial so we solicited input from the judges before publication. We were trying to involve the judges really before the process even got started. I think once understood, it would be agreed that we were bending over backwards to get the views of judges. It is incorrect to conclude, as some evidently did, at least as communicated to me by some of the representatives of the judicial associations, that the Supreme Court had decided to impose a solution where there was no problem. Moreover, it was incorrect that the changes were a fait accompli, and that the request for feedback was only so much window dressing.

That certainly was not the intention, and while I believe that the perception I've mentioned doesn't reflect what the Court tried to do, nevertheless, I am very concerned about that perception. Please understand that the administrative process is itself a work in progress. If you see a way to improve it, believe me, we want to hear about it.

I have gone into this at the risk of sounding defensive about the process, but I do want to assure you that the Court really does care what you think. We have a

fine group of judges in this state with good sense. Witness the fact that we've rarely adopted proposals that the trial bench is uniformly opposed to.

For my part, let me offer a few suggestions for your participation in the administrative process. Again, we do care what you think and are receptive to your suggestions, but this only works if both sides are communicating.

If, for example, you have an administrative proposal, you will make our job much easier, and strengthen your proposal, if you will take the following into account:

How extensive is the problem you are trying to fix? Specificity matters. Can you measure or quantify its impact? Does your problem, or the proposed solution, affect others? Have you consulted with them?

Is this a procedural problem, or are you trying to find a procedural fix for what's really a statutory problem? If the problem is statutory, have you considered discussing it with the Court's legal counsel?

Is your request related or in reaction to what is happening in another state or country on the issue? What is the history of the issue? Has there been media coverage of the issue here or elsewhere that you can share with the Court? Have any major interest groups expressed a position on the proposal you espouse?

What is the authority for your proposal? State or federal law, rules or regulations and case law are all appropriate bases for considering changes to the

court rules. To the extent that you as the proponent can help me and the Court understand the background of the need for the change, it is very helpful.

Look at Administrative Order 1997-11, which outlines the requirements for the Court to hold public hearings, and how to participate in those hearings.

And, finally, there's this tried and true old stand-by: pick up the phone and give me or one of us a call.

I'm going to take a few more minutes to touch on several of the Court's recent decisions and what they mean in the aggregate. Two of these cases are from the conclusion of our term just past that I think have special significance for the trial bench.

First, there is the ruling in *46th Circuit Trial Court v County of Crawford and County of Kalkaska*. If you're not familiar with the case, here's the shorthand version: this was a funding dispute between the trial court and two of its three funding units. At issue was whether the counties could be compelled by the local court to fund enhanced pension and retiree health care plans for the court's employees. The court argued that the funding was required to keep the judiciary functioning. That is, that it was "reasonable and necessary" to insure the court's performance of its essential judicial functions and thus the county commissioners, by a court order, should be directed to fund it. Although a circuit court and the Court of Appeals held otherwise, a majority of our Court found that the trial court

failed to establish by clear and convincing evidence that the enhanced benefits were "necessary" to the trial court's ability to function "serviceably" in fulfilling its judicial functions. Simply stated, things had not reached a point that the legislative branch of local government, the county commissioners, could be mandated by the judiciary as to the appropriations for the judiciary that they must make.

Now, what does this mean for you and your courts? It does not affect judicial independence. Courts can still adjudicate as always. It simply outlines the very limited circumstances when the legislative branch can be dictated to with regard to judicial branch funding. Our decision does not mean that your funding units can treat your courts as mere departments anymore than they can treat an executive branch office, such as the prosecutor's office, as a department instead of a co-equal branch of government. But it does mean that, in a dispute of this kind, courts will have to specify exactly which statutory or constitutionally-ordained functions will go unaccomplished if funding is not compelled. It is my view that this standard is unexceptional. It is in harmony with our past holdings over the years and with the holdings in other states in the country. It is, in short, a reaffirmation of separation of powers properly understood. Obviously, it also means that, just as with us working with the Michigan legislature, that the best option for you is to work with and have a good relationship with your funding unit.

I'd also like to call your attention to an issue that the court and I addressed in *Adair v State of Michigan*, and that is that it is a judge's duty to sit—not to disqualify him or herself for unsubstantial reasons. This topic was dealt with well by Judges Giovan and Kingsley during one of the sessions of the annual judicial conference in Grand Rapids, and I think we do well to remind ourselves of it now.

There has been much controversy over disqualification issues and even attempts to opportunistically utilize the issue, as you no doubt know. In *Adair*, the plaintiffs moved for Justice Markman and me to disqualify ourselves, based on the fact that both our spouses work for the state Attorney General. Despite the fact that neither my wife Lucille nor Steve's wife Mary Kathleen was involved in any way with the *Adair* case, the plaintiffs asserted that their association with the Attorney General's office created an "appearance of impropriety" that warranted our disqualification. It appeared to us the parallels to county judges with spouses working for large employers in the county, schools, county government and the like, were obvious. If this were a valid basis for disqualification, it would, carried to its logical end, compromise the ability, needlessly, of many judges to serve in this state.

Our response was detailed, and I believe, thorough. In essence, we denied the motion and declined to adopt a standard that would require a Michigan judge's disqualification even when he or she has complied with all the applicable ethical

canons and court rules because of some subjectively and opportunistically advanced claim of the "appearance of impropriety." To adopt a different standard would be to give any litigant or lawyer a license to oust the judge that he or she disfavors, and keep that process going until the desired jurist is presiding. This is not what American constitutions, federal and state, have ever been held to contemplate. Instead, the rule is and has been, and I feel all of our judges should understand it, that each of us has a constitutionally-mandated duty to sit that is trumped only by actual conflict or what you sincerely feel, even without an actual conflict, is a situation where you cannot render full justice in the matter before you.

Finally, I would call your attention to four cases that I think represent what we stand for—and conversely, cannot stand for—as members of the bench or bar. I refer to *In re Bradfield*, *In re Haley, Grievance Administrator v Fieger*, and *Maldonado v Ford Motor Company*.

Each case, of course, has its own very different facts and legal issues. *In re Bradfield* involved a judge who engaged in two angry confrontations, one with a city official of his jurisdiction and the other with a parking structure attendant. In *In re Haley*, we dealt with a judge who, uncharacteristically, manifested poor judgment by accepting a pair of football tickets during a hearing from the attorney who was appearing before him. In *Grievance Administrator v Fieger*, the respondent attorney had called Court of Appeals judges vile names and had

described the manner in which he hoped to see them sodomized. In *Maldonado v Ford*, the plaintiff appealed a trial court's dismissal of her case—a sanction the court imposed because the plaintiff and her counsel knowingly violated the court's order against publicizing a defendant's expunged conviction for indecent exposure and, thus imperiled the defendant's right to a fair jury trial. In each case, the Court—twice unanimously, and twice by a majority—upheld the sanction at issue.

Each case stands for the proposition that there are some things that we as a profession will not tolerate. Rambo lawyering, I think, should be one of them. I continue to believe, and hope you do too, that each of us committed ourselves, on the day of admission to the bar, to be governed by certain standards. Recall the oath for a moment that you took that day. It does not seem too much to ask that criticism of a judge should consist of more than mere verbal abuse, or that judges should themselves refrain from abusive behavior. It does not seem too much to expect that a judge will behave appropriately in court, or that litigants themselves will behave appropriately and comply with court orders. That we have for centuries done so has made our legal system the envy of the world.

There's a respect that's due to the courts, and to this process called the rule of law. It takes courage to stand up for those principles—I don't suppose it was easy for the trial judge in *Maldonado*, for example, to impose that sanction, knowing he was the likely next target of public criticism by the litigants.

So what is the net of all of this? First, we are a judiciary that properly understands separation of power doctrines. We are a separate branch of government and defend our right to handle cases and controversies without fear or favor. However, that power does not negate the authority of the legislative branch to control taxing and appropriations to us and the executive branch. It is only in the very rare circumstance that our funds are reduced so we cannot perform our judicial function that thoughts of our inherent powers to compel appropriations should be entertained.

Second, each of us was placed in charge of their court as provided by law. It is our duty to sit on cases properly assigned to us. Disqualification is not to be seen as exploitable at the option of aggressive lawyers. In short, judges will run the Michigan judiciary.

Third, if you run your courts firmly and fairly, you will have the backing of our Court. Our judicial system is too treasured to allow bullying and intimidation to undo the work of centuries in creating a court system where the least among our citizens can expect a respectful hearing and proper handling. This is the moment, I believe, to reassert this and with my colleagues we will, with your assistance, make this the central matter to be understood about Michigan's courts.

Thank you and God bless you for fearlessly doing your duty day in and day out. It is appreciated by all of us at our Court, but more important, by your fellow citizens.